

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEBORAH WILSON,	)	
	)	
Plaintiff(s),	)	No. C07-3431 BZ
	)	
v.	)	Related Case: C07-5642 BZ
	)	
COMPASS VISION INC., et al.,	)	<b>ORDER SCHEDULING JURY TRIAL</b>
	)	<b>AND PRETRIAL MATTERS</b>
	)	
Defendant(s).	)	
_____	)	

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

1. TENTATIVE DATES

Trial Date: **Monday, 5/11/2009, 20 days**

Pretrial Conference: **Tuesday, 4/21/2009, 3:00 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 3/18/2009**

Last Day for Expert Discovery: **Friday, 2/6/2009**

Last Day for Expert Disclosure: **Friday, 1/30/2009**

Close of Non-expert Discovery: **Friday, 1/23/2009**

A status conference is set for **September 15, 2008 at**

1 **3:00 p.m.** to discuss whether these cases should be  
2 consolidated for trial. The final trial schedule will be set  
3 at the conference. As discussed at the case management  
4 conference, the parties shall meet and confer prior to the  
5 conference to discuss the most efficient and appropriate way  
6 to present these cases to a jury.

7 2. DISCLOSURE AND DISCOVERY

8 As discussed at the case management conference, the  
9 parties are **ORDERED** to meet and confer regarding discovery  
10 issues and stipulate to a discovery plan. By no later than  
11 **April 15, 2008**, the parties shall file a proposed order  
12 approving their stipulated discovery plan.

13 The parties are reminded that a failure to voluntarily  
14 disclose information pursuant to Federal Rule of Civil  
15 Procedure 26(a) or to supplement disclosures or discovery  
16 responses pursuant to Rule 26(e) may result in exclusionary  
17 sanctions. Thirty days prior to the close of non-expert  
18 discovery, lead counsel for each party shall serve and file a  
19 certification that all supplementation has been completed.

20 In the event a discovery dispute arises, **lead counsel** for  
21 each party shall meet in person or, if counsel are outside the  
22 Bay Area, by telephone and make a good faith effort to resolve  
23 their dispute. Exchanging letters or telephone messages about  
24 the dispute is insufficient. The Court does not read  
25 subsequent positioning letters; parties shall instead make a  
26 contemporaneous record of their meeting using a tape recorder  
27 or a court reporter.

28 In the event they cannot resolve their dispute, the

1 parties must participate in a telephone conference with the  
2 Court **before** filing any discovery motions or other papers.  
3 The party seeking discovery shall request a conference in a  
4 letter filed electronically not exceeding two pages (with no  
5 attachments) which briefly explains the nature of the action  
6 and the issues in dispute. Other parties shall reply in  
7 similar fashion within two days of receiving the letter  
8 requesting the conference. The Court will contact the parties  
9 to schedule the conference.

10 3. MOTIONS

11 Consult Civil Local Rules 7-1 through 7-5 and this  
12 Court's standing orders regarding motion practice. Motions  
13 for **summary judgment** shall be accompanied by a statement of  
14 the material facts not in dispute supported by citations to  
15 admissible evidence. The parties shall file a joint statement  
16 of undisputed facts where possible. If the parties are unable  
17 to reach complete agreement after meeting and conferring, they  
18 shall file a joint statement of the undisputed facts about  
19 which they do agree. Any party may then file a separate  
20 statement of the additional facts that the party contends are  
21 undisputed. A party who without substantial justification  
22 contends that a fact is in dispute is subject to sanctions.

23 A Chambers copy of all briefs shall be e-mailed in  
24 WordPerfect or Word format to the following address:  
25 bzpo@cand.uscourts.gov.

26 4. MEDIATION

27 By agreement of the parties, this matter has been  
28 referred for an Mediation to be conducted by **August 1, 2008.**

1 The parties shall promptly notify the Court whether the case  
2 is resolved at the Mediation.

3 5. SETTLEMENT

4 This case has been referred for assignment to a  
5 Magistrate Judge to conduct a settlement conference in January  
6 or February of 2009, in the event the case is not resolved at  
7 the Mediation. Counsel will be contacted by that judge's  
8 chambers with a date and time for the conference.

9 6. PRETRIAL CONFERENCE

10 Not less than thirty days prior to the date of the  
11 pretrial conference, the parties shall meet and take all steps  
12 necessary to fulfill the requirements of this Order.

13 Not less than twenty-one days prior to the pretrial  
14 conference, the parties shall: (1) serve and file a joint  
15 pretrial statement, containing the information listed in  
16 **Attachment 1**, and a proposed pretrial order; (2) serve and  
17 file trial briefs, Daubert motions, motions *in limine*,  
18 proposed findings of fact and conclusions of law, and  
19 statements designating excerpts from discovery that will be  
20 offered at trial (specifying the witness and page and line  
21 references); (3) exchange exhibits, agree on and number a  
22 joint set of exhibits and number separately those exhibits to  
23 which the parties cannot agree; (4) deliver all marked trial  
24 exhibits directly to the courtroom clerk, Ms. Scott; (5)  
25 deliver one extra set of all marked exhibits directly to  
26 Chambers; and (6) submit all exhibits in three-ring binders.  
27 Each exhibit shall be marked with an exhibit label as  
28 contained in **Attachment 2**. The exhibits shall also be

1 separated with correctly marked side tabs so that they are  
2 easy to find.

3 No party shall be permitted to call any witness or offer  
4 any exhibit in its case in chief that is not disclosed at  
5 pretrial, without leave of Court and for good cause.

6 Lead trial counsel for each party shall meet and confer  
7 in an effort to resolve all disputes regarding anticipated  
8 testimony, witnesses and exhibits. All Daubert motions,  
9 motions *in limine*, and objections will be heard at the  
10 pretrial conference. Not less than eleven days prior to the  
11 pretrial conference, the parties shall serve and file any  
12 objections to witnesses or exhibits or to the qualifications  
13 of an expert witness. Daubert motions and motion *in limine*  
14 shall be filed and served not less than twenty days prior to  
15 the conference. Oppositions shall be filed and served not  
16 less than eleven days prior to the conference. There shall be  
17 no replies.

18 Not less than twenty-one days prior to the pretrial  
19 conference the parties shall serve and file requested voir  
20 dire questions, jury instructions, and forms of verdict. The  
21 following jury instructions from the *Manual of Model Civil*  
22 *Jury Instructions for the Ninth Circuit* (2007 ed.) will be  
23 given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11,  
24 3.1-3.3. Do not submit a copy of these instructions. Counsel  
25 shall submit a joint set of case specific instructions. Any  
26 instructions on which the parties cannot agree may be  
27 submitted separately. The Ninth Circuit Manual should be used  
28 where possible. Each requested instruction shall be typed in

1 full on a separate page with citations to the authority upon  
2 which it is based. Proposed jury instructions taken from the  
3 Ninth Circuit Manual need only contain a citation to that  
4 source. Any modifications made to proposed instructions taken  
5 from a manual of model instructions must be clearly indicated.  
6 In addition, all proposed jury instructions should conform to  
7 the format of the Example Jury Instruction attached to this  
8 Order. Not less than eleven days prior to the pretrial  
9 conference, the parties shall serve and file any objections to  
10 separately proposed jury instructions.

11 Jury instructions that the Court has given in prior cases  
12 may be downloaded from the Northern District website at  
13 **<http://www.cand.uscourts.gov>**. (Instructions are located on  
14 the "Judge Information" page for Magistrate Judge Zimmerman.)  
15 The Court will generally give the same instructions in cases  
16 involving similar claims unless a party establishes, with  
17 supporting authorities, that the instruction is no longer  
18 correct or that a different instruction should be given.  
19 CACI instructions generally will be given instead of BAJI  
20 instructions.

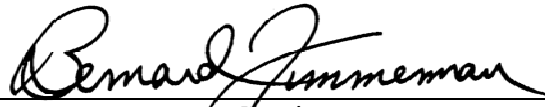
21 All motions, proposed findings of fact and conclusions of  
22 law and trial briefs shall be e-mailed in WordPerfect or Word  
23 format to the following address: [bzpo@cand.uscourts.gov](mailto:bzpo@cand.uscourts.gov)

24 At the time of filing the original with the Clerk's  
25 Office, two copies of all documents (but only one copy of the  
26 exhibits) shall be delivered directly to Chambers (Room 15-  
27 6688). Chambers' copies of all pretrial documents shall be

28 ///

three-hole punched at the side, suitable for insertion  
into standard, three-ring binders.

Dated: March 27, 2008

A handwritten signature in black ink, reading "Bernard Zimmerman". The signature is written in a cursive style with a large, stylized 'B' and 'Z'. It is positioned above a horizontal line.

Bernard Zimmerman  
United States Magistrate Judge

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**ATTACHMENT 1**

The parties shall file a joint pretrial conference statement containing the following information:

**(1) The Action.**

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

**(2) The Factual Basis of the Action.**

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

**(3) Trial Preparation.**

A brief description of the efforts the parties have



1 made to resolve disputes over anticipated testimony,  
2 exhibits and witnesses.

3 (A) Witnesses to be Called. In  
4 lieu of FRCP 26(a)(3)(A), a  
5 list of all witnesses likely  
6 to be called at trial, other  
7 than solely for impeachment or  
8 rebuttal, together with a  
9 brief statement following each  
10 name describing the substance  
11 of the testimony to be given.

12 (B) Estimate of Trial Time. An  
13 estimate of the number of  
14 court days needed for the  
15 presentation of each party's  
16 case, indicating possible  
17 reductions in time through  
18 proposed stipulations, agreed  
19 statements of facts, or  
20 expedited means of presenting  
21 testimony and exhibits.

22 (C) Use of Discovery Responses. In  
23 lieu of FRCP 26(a)(3)(B), cite  
24 possible presentation at trial  
25 of evidence, other than solely  
26 for impeachment or rebuttal,  
27 through use of excerpts from  
28 depositions, from  
interrogatory answers, or from  
responses to requests for  
admission. Counsel shall  
state any objections to use of  
these materials and that  
counsel has conferred  
respecting such objections.

(D) Further Discovery or Motions.  
A statement of all remaining  
motions, including Daubert  
motions.

23 **(4) Trial Alternatives and Options.**

24 (A) Settlement Discussion. A  
25 statement summarizing the  
26 status of settlement  
27 negotiations and indicating  
28 whether further negotiations  
are likely to be productive.

(B) Amendments, Dismissals. A  
statement of requested or

1 proposed amendments to  
2 pleadings or dismissals of  
parties, claims or defenses.

3 (C) Bifurcation, Separate Trial of  
4 Issues. A statement of whether  
bifurcation or a separate  
5 trial of specific issues is  
feasible and desired.

6 (5) **Miscellaneous.**

7 Any other subjects relevant to the trial of the action,  
8 or material to its just, speedy and inexpensive  
determination.

**ATTACHMENT 2**

**USDC**  
Case No. CV07-03431 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV07-03431 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV07-03431 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV07-03431 BZ  
**JOINT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV07-03431 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV07-03431 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV07-03431 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV07-03431 BZ  
**PLNTF** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV07-03431 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_

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**USDC**  
Case No. CV07-03431 BZ  
**DEFT** Exhibit No. \_\_\_\_\_

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